

Contractual penalty under the Commercial Code

Summary

The theme of this Master's degree thesis is Contractual penalty under the Commercial Code. Author chose this topic because contractual penalty is important and very often-used institute through which parties to the contract can secure their obligations. This instrument should guarantee that the debtor would perform his main (primary) commitment to the creditor. If not, he may be punished for a breach of the contract even if there won't arise any damage (loss) on the creditor's side. This fact represents considerable advantage over other similar institutes.

The study is focused on issues of contractual penalty in commercial relations, specifically in a situation when both parties to the contract are businessmen and they entered into agreement in connection with their business. However the legislation of the instrument is relatively brief (articles 544 and 545 of the Act No. 40/1964 Coll., The Civil Code and articles 300 to 302 of the Act No. 513/1991 Coll., The Commercial Code, which includes a special regulation for business relations), many questions and uncertainties can be found. Many of them were resolved by adjudications but there are still problematic aspects. Author focuses on their solutions and tries to give response, which will be satisfactory and justified. Therefore he analyses not only legislation of contractual penalty but also court decisions and scholarly literature and articles.

The thesis is composed of ten Chapters. First section (two Chapters) is devoted to basic issues. There is the concept and functions of the contractual penalty characterized and also outlined the historical development of legislation. Third Chapter is quite extensive and is subdivided into two parts. Part one is focused on formalities of the agreement on the contractual penalty, while the second describes content requirements, thus parties, hedged obligation, subject of a performance and amount of contractual penalty.

Chapters Four to Six deal with conditions that must be met in order to create right (claim) for a contractual penalty and are therefore required by law. If the debtor fails to fulfil his obligation to pay the penalty, the creditor must exercise his right in court, on this issue is discussed in Chapter Seven. In the situation where the amount of this contractual penalty is too high, the court may reduce it. This moderation

privilege (as the institute applicable only to commercial relations) is the subject of Chapter Eight.

In Chapter Nine there is contained a comparison of contractual penalty and similar instruments, which means damage and punitive interest. The last Chapter evaluates new legislation, which will come into effect on 1 January 2014. Author supposes that this legislation, contained in the new Civil Code, removes some controversial aspects that are currently dealt with the practice courts or legal theory. In any case, it is obvious that contractual penalty retains in the future its important role in securing commitment in business relationships.